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**Billing Code 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-5752-N-35]**

**30-Day Notice of Proposed Information Collection:**

**HUD Multifamily Rental Project Closing Documents**

**Renewal of Currently Approved Collection**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** Comments Due Date: **[Insert date that is 30 Days after the date of publication in the Federal Register.]**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal.

Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806. Email: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; e-mail Colette Pollard at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone

202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 29, 2013.

## **I. Overview of Information Collection**

Title of Information Collection: Multifamily Rental Project Closing Documents Renewal of Currently Approved Collection.

OMB Approval Number: 2502-0598.

Type of Request: Revision of currently approved collection.

Form Number: Please see below.

Description of the need for the information and proposed use: These are closing documents (Closing Documents) used in FHA-insured multifamily rental project transactions. The documents included in the proposed collection of information, including where applicable redline/strikeout versions showing both the changes that were proposed with the 60-day notice and the cumulative proposed changes to documents currently in use, have been posted on HUD's website at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhclosingdocuments](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments).

While complying with the Paperwork Reduction Act of 1995, this 30-day notice provides information beyond that normally provided in such notices. This notice identifies substantive changes that HUD has made to the Closing Documents in response to public comment submitted

in response to the October 29, 2013 notice, and responds to significant issues raised by commenters on the Closing Documents.

### Security Instrument

One comment suggested expanding the definition of “Loan Documents” to be consistent with the definition used in the Section 232 healthcare program and to incorporate more of the documents in this collection. HUD has made this revision. Another comment suggested clarifications to the definition of Mortgaged Property. HUD has made these clarifications in both the Security Instrument and the Regulatory Agreement.

Another comment suggested requiring payment of Imposition Deposits a minimum of thirty (30) days prior to the date they are due without penalty or interest, rather than by the date they are due without penalty or interest. HUD has determined that this change is not necessary since it has not previously encountered objections to the current language, and such a change would place an increased burden on borrowers to submit imposition deposit payments a full month before they are due.

### Note

HUD revised the language in section 9(h) to make clear that, with respect to a project insured under Section 223(f), a prepayment resulting in a project’s conversion to a use other than rental housing is permissible within the five-year post-closing time frame if HUD is able to make the requisite statutory findings.

HUD has taken the opportunity to clarify that Rider 1, attached to the Note for projects being financed with GNMA or Other Bond Obligations, is only to include the prepayment

lockout and premium schedule. Since the provisions typically included in Rider have been incorporated into the body of the Note it is no longer necessary to insert them in the Rider.

### Regulatory Agreement

One comment suggested removing limitations on distributions in section 14. HUD has declined to make this change. Distributions remain subject to surplus cash requirements and limited to twice-annual Surplus Cash calculation, as set forth in section 13(a).

HUD accepted comments inserting language in section 18 so it is clear that submission of final reports by partial-year owners is required. In section 21(g), which limits the ability of management agents to seek indemnification, HUD accepted comments inserting a standard of gross negligence or willful misconduct.

### Lender's Certificate

In section 15, HUD accepted one commenter's suggestion to calculate the ten (10) year anniversary date for the PCNA reporting requirement based on the commencement of amortization date for new construction/substantial rehabilitation projects. We agree that using the commencement of amortization date is preferable since it closely tracks when construction is completed, is easily identified, and rarely changes. With the addition of this language, HUD has determined that the PCNA Rider is no longer necessary and will make the appropriate revision in the MAP Guide.

A commenter pointed out that for purposes of consistency with the Lean program and previous guidance, section 24(b) should be revised to change the date of delinquency for a missed payment from the tenth (10<sup>th</sup>) to the fifteenth (15<sup>th</sup>) day of the month in which it is due.

HUD has considered this comment, but has decided not to make the change at this time. For the Multifamily program, the tenth (10<sup>th</sup>) of the month is correct.

A commenter suggested clarifications to section 30 and suggested that the section be limited “to the best of Lender’s knowledge.” HUD has made several of the clarifications requested but has declined to add the limitation to the best of lender’s knowledge. HUD has kept the language, “...based upon Lender’s due diligence.”

Another commenter suggested that because UCC Financing Statements do not always establish first liens that section 38 be revised to only state that a perfected security interest has been established in favor of Lender that is only subject to matters approved by HUD. HUD has determined that this change is not warranted in Lender’s Certificate since this document covers new construction/substantial rehabilitation. It is unlikely that there will be prior financing statements in this context, and if there are, revisions to this section would be better addressed on a project basis.

#### Request for Endorsement

In a comment similar to the comments regarding section 30 of the Lender’s Certificate described above, a comment suggested clarifications to the certification regarding permits and approvals. In considering this comment, HUD determined that because the Lender’s Certificate is used for new construction and substantial rehabilitation transactions but this document is not, differences between the two documents are warranted with regard to this certification. Due to the limited nature of the permits and approvals necessary for the transactions for which this document is used, HUD limited the certifications accordingly and determined that no exhibit to list the required approvals is necessary.

### Request for Final Endorsement

A comment suggested adding to this document a certification regarding permits and approvals similar to the certification in the Lender's Certificate. HUD agrees with this comment.

### Opinion of Borrower's Counsel and Instructions

HUD received a very general yet significant comment about the Opinion of Borrower's Counsel. The commenter objected to HUD's refusal to allow the Opinion to be negotiable, and observed that this inflexibility does not conform to customary opinion practice. HUD rejects this comment and continues to make the Opinion of Borrower's Counsel a uniform, standardized document that cannot be modified on a deal-by-deal basis unless the change is required to comply with state or local law. HUD does not have the staffing capacity that would be needed to permit deal-by-deal negotiations of the Opinion, and it would be difficult to ensure that such negotiations were accomplished uniformly across the nation. The use of a uniform, non-negotiable form will also reduce transaction costs.

The commenter also asked HUD to narrow the list of documents reviewed in connection with the issuance of the Opinion and the list of documents upon which the various opinions within the form Opinion are based. HUD declined to adopt these changes. HUD determined that its interests and due diligence needs with respect to ensuring that borrowers are able to fulfill their legal obligations in connection with the loan closing and project ownership are not limited to the provisions in the Note, Security Instrument, Regulatory Agreement, and Building Loan Agreement. HUD's practice in this regard is consistent with that of Fannie Mae and Freddie Mac. Further, HUD has also, for now, decided not to adopt a request that it move the "closing" instructions contained in the Instructions to the Opinion of Borrower's Counsel to another location.

Regarding the suggestion that HUD remove any negative assurances in keeping with private practice, HUD declines. HUD's due diligence needs are distinguishable from that of the conventional loans and securities offering and HUD's practice is consistent with that of Fannie Mae and Freddie Mac.

The commenter also requested that opinions that the borrower has the power and authority to comply with statutes, that the loan documents will not violate local law, that the borrower has authority to enter into the loan, that the loan documents are enforceable, that the project is properly zoned, that the loan documents will not contravene the borrower's other agreements, and that the loan documents are sufficient to create a lien in the mortgaged property be removed. Commenter also requested removal of factual confirmations, as well as disclosure of the attorney's financial interest and borrower's pending litigation. Commenter further requested that deviations from the form opinion not be disclosed. Commenter asked to remove language permitting HUD to rely on the opinion letter, and delete the False Claims Act warning language. HUD declines each of these requests. The requested changes would be adverse to FHA's mandate.

Commenter requested that the opinion on Public Entity Agreements (PEA) be removed, but this comment stems from commenter's confusion between PEAs and secondary financing documents, thus HUD declines.

#### Subordination Agreement

HUD received a comment that subordinate lender entities should not be subject to qualification under HUD's Program Obligations. HUD has determined that the reference to qualifying under Program Obligations should be deleted. While only public bodies providing

secured, secondary financing to FHA-insured multifamily projects use this Subordination Agreement, HUD believes that its approval of the use and execution of the Subordination Agreement on a given transaction constitutes the necessary approval of the subordinate lender.

HUD received a comment that the deliverables required under section 4 are not necessary for refinance transactions under Section 223(a)(7) and 223(f) of the National Housing Act. HUD disagrees with the comment with respect to transactions refinanced under Section 223(f) as it is very important for the Department to receive the necessary assurances. HUD, however, agrees that it is not necessary to obtain a copy of the subordinate loan documents for currently insured projects undergoing a 223(a)(7) refinancing after the refinancing takes place.

HUD received a comment about the provision in the document concerning bankruptcy. The comment related to events *after* a borrower's bankruptcy filing, whereas the provision in the Subordination Agreement concerns the timeframe *prior* to a bankruptcy filing. Consequently, HUD has rejected the comment.

HUD received a request to eliminate section 6(b), which precludes subordinate lenders from commencing a foreclosure in the event of a default under the subordinate loan documents without senior lender's consent. HUD disagreed with this comment. Foreclosures of a subordinate loan are still subject to the senior FHA-insured mortgage. Therefore, foreclosure's benefits to the subordinate lender are limited but foreclosure by the subordinate lender without senior lender consent risks disrupting project operations, ownership and senior lender's ability to effect a work out. Further, as is provided for in section 6(b), subordinate lenders may seek recovery against non-project sources such as personal guaranties, as well as specific enforcement remedies relating to project use and occupancy requirements.



HUD agreed with the comment that any future modification of the senior loan documents should not negatively impact subordinate lenders. Consequently, HUD has placed limitations on the ability to modify the senior loan without subordinate lender consent, and has further decided to include limitations on the ability to refinance the senior loan.

Estimated Burden: Please see following table.

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hours Per Response	Annual Burden Hours	Hourly Cost	Total Annual Cost
HUD-91710M	600	1	600	0.5	300	\$26	\$700
HUD-91712M	600	1	600	0.5	300	\$26	\$7,800
HUD-92023M	1250	1	1250	1	1250	\$26	\$32,500
HUD-92070M	60	1	60	0.5	30	\$26	\$780
HUD-92223M	600	1	600	0.5	300	\$26	\$7,800
HUD-92412M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-92414M	1250	1	1250	0.5	625	\$26	\$16,250
HUD-92450M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-92452A-M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-92452M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-92455M	1075	1	1075	1	1075	\$26	\$27,950
HUD-92456M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-91073M	1250	1	1250	0.5	625	\$26	\$16,250
HUD-92464M	1250	1	1250	1	1250	\$46	\$57,500
HUD-92476.1M	1075	1	1075	0.5	537.50	\$26	\$13,975
HUD-92476a-M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-92477M	175	1	175	0.5	87.50	\$26	\$2,275

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hours Per Response	Annual Burden Hours	Hourly Cost	Total Annual Cost
HUD-92478M	1250	1	1250	0.5	625	\$26	\$16,250
HUD-92479M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-91725M	1250	1	1250	1	1250	125	\$156,250
HUD-91725M-CERT	1250	1	1250	1	1250	\$46	\$57,500
HUD-91725M-INST	0	0	0	0	0	0	0
HUD-92434M	175	1	175	1	175	\$26	\$4,550
HUD-92441M-SUPP	175	1	175	.75	131.25	\$26	\$3,412.50
HUD-92441M	175	1	175	.75	131.25	\$26	\$3,412.50
HUD-92442M	175	1	175	1	175	\$58	\$10,150
HUD-92466M	1250	1	1250	1	1250	\$58	\$72,500
HUD-92554M	175	1	175	0.5	87.50	\$26	\$2,275
HUD-94000M	1250	1	1250	0.75	937.5	\$26	\$24,375
HUD-94001M	1250	1	1250	1	1250	\$26	\$32,500
HUD-93305M	1250	1	1250	0.5	625	\$26	\$16,200
HUD-92476M	20	1	20	0.5	10	\$26	\$200
HUD-92420M	600	1	600	0.5	300	\$26	\$7,800
HUD-92408M	1250	1	600	2	2500	\$103	\$257,500
HUD-91070M	1250	1	1250	0.5	625	\$36	\$22,500
HUD-91071M	20	1	20	0.5	10	\$26	\$260
<b>Totals</b>			<b>23,175</b>		<b>18,325</b>		<b>\$894,550.00</b>

The hourly rate is an estimate based on an average annual salary of \$62,000 for developers and mortgagees.

### III. Solicitation of Public Comment

#### A. Burden of Information Collection

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in this notice on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information.
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected or any content of the Closing Documents.
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments must be received by **INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Colette Pollard, Reports Management Officer, QDAM,  
 Department of Housing and Urban Development,  
 451 7th Street, SW, Room 4176,  
 Washington, DC 20410-5000

and

HUD Desk Officer  
Office of Management and Budget  
New Executive Office Building  
Washington, DC 20503  
Fax number: (202) 395-6947

**V. Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Date:** March 26, 2014

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Collette Pollard, Reports Management Officer,  
Office of the Chief Information Officer

[FR- FR-5752-N-35]

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